THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.36540 of 1998

Dated : 26-11-2007

Between :

S. Iqbal Hussain
… Petitioner/s

And

The Government of A.P.,
Rep.by its Secretary to Government,
Irrigation and CAD Department,
Secretariat Buildings,
Hyderabad and 4 others.
…Respondent/s

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ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Heard learned counsel for the petitioner and the learned Government Pleader for Irrigation and Command Area Development.

2. This writ petition is filed by the petitioner challenging the order, dated 18-03-1998, in O.A.No.1265 of 1998, passed by the A.P. Administrative Tribunal, Hyderabad (for brevity 'the Tribunal'), directing the respondents therein to continue the applicants therein

in service in the post in which they are working on the same terms and conditions, if they are continued as on that date and if there is work load.

3. It is the case of the petitioner that he is working as N.M.R./Workcharged employee. He along with others filed O.A.No.1265 of 1998 before the Tribunal, seeking regularization of services. The Tribunal, after hearing both sides and considering the material on record, disposed of the O.A., directing the respondents to continue the applicants therein on the same terms and conditions, if they are continued as on that date and if there is work load. Aggrieved by the said condition imposed by the Tribunal, the petitioner alone filed the present writ petition.

4. Admittedly, the petitioner has been working as N.M.R./Workcharged employee and seeks regularization of his services basing on G.O.Ms.No.212, Finance and Planning, dated 22-04-1994, issued by the Government, which deals with the regularization of the services of the temporary employees with certain conditions, which are as under:

1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularized.
2) They should be within the age limits as on the date of appointment as NMR/Daily wage employee.
3) The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.
4) Sponsoring of candidates from Employment Exchange is relaxed.
5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission / District Selection Committee.
6) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other

departments, District Offices, provided there are clear vacancies of last Grade Service.

5. A plain reading of condition No.5 of the above conditions, would disclose that even if all other conditions are satisfied, availability of permanent vacancy is essential.

6. Learned counsel for the petitioner brought to the notice of this Court that in similar circumstances, the apex Court, in S.L.P.No.10532 of 1996 and batch, dated
06-02-1998, held that the employees shall be regularized with effect from the date of completion of five years of continuous service. In other words, it is only five years of continuous service, which is sufficient for regularization of an employee, but not strictly from the effective date mentioned in G.O.Ms.No.212, dated 22-04-1994. However, it has been further clarified by the apex Court that the other conditions mentioned in the said G.O., will have to be satisfied for the purpose of regularization.

7. In the instant case, the Tribunal with no deviation from the judgment of the apex Court, passed the impugned order, directing the respondents to regularize the services of the petitioner subject to satisfaction of condition No.5 of G.O.Ms.No.212, dated 22-04-1994. The petitioner had completed the continuous service of five years as N.M.R./ Workcharged employee. Therefore, as per the judgment of the apex Court, he is entitled for regularization of his services. However, the apex Court also held that the applicability of G.O.Ms.No.212, dated 22-04-1994, is subject to satisfaction of the other conditions, including condition No.5 i.e., availability of permanent vacancy.

8. Obviously, the petitioner is not able to establish the availability of any permanent vacancy in which vacancy alone, he would be entitled to get absorbed, subject to the seniority etc. That

is the reason why the Tribunal had expressly directed the respondents to regularize the services of the petitioner subject to the satisfaction of the said condition.

9. In the light of the judgment of the apex Court, referred to supra, we are of the view that there is absolutely no illegality or irregularity in the impugned orders passed by the Tribunal, warranting interference by this Court.

10. For the foregoing, there are no merits in the writ petition and the same is liable to be dismissed.

11. In the result, the writ petition is dismissed. There shall be no order as to costs.

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JUSTICE D.S.R. VARMA

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JUSTICE K.C. BHANU

26-11-2007
Msr

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